of being knowingly in possession of uncustomed articles. He appealed against the conviction and sentence. The defence was that the articles in question were unredeemed articles and part of the stock of a pawn shop in Kuala Lumpur. The articles had been given by the pawn shop to the appellant's uncle who was to take them out of Kuala Lumpur to sell them at a profit. As his uncle decided not to go outstation he gave the articles to the appellant to sell them at Ipoh.

The learned President found that the items referred to in the pawnshop's Unredeemed Articles Book were so vague and general in description that they were incapable of accurately identifying or being identified with the articles found in possession of the appellant.

Held: the appellant in this case had failed to discharge his burden of proof and therefore had not rebutted the presumption under the Customs Ordinance s. 131(2).

Case referred to:—

(1) *Saminathan & Ors. v. Public Prosecutor* (1955) M.L.J. 121.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Yew Siong for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Buhagiar J.: — The appellant was charged before the Sessions Court with an offence under section 131 (1) (d) of the Customs Ordinance, 1952, in that he was knowingly in possession of uncustomed goods, viz., certain items of jewellery. He was found guilty, convicted and sentenced to a fine of $1,265 or in default four months imprisonment.

The appeal is against conviction and sentence.

In *Saminathan & Ors. v. Public Prosecutor*[1], I have dealt at some length with the question of burden of proof in cases of statutory presumptions, in general and in cases of the presumption under section 131 (2) of the Customs Ordinance, 1952, in particular. There I held that in cases under the said section 131 (2) the accused has to prove that he did not know that the goods were uncustomed or adduce such evidence as to make the existence of the fact that the accused had no knowledge that the goods were uncustomed so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that that fact exists.

It was argued, however, by the learned Counsel for the appellant that the learned President misdirected himself in construing as suspicious the behaviour of the appellant when challenged by the Senior Revenue Officer (P. W. 2). It was submitted that the appellant was stopped at one of the road blocks which are common in present emergency and that even if the appellant when asked what he had in his possession stated that he had nothing on him (which is denied) such statement should not be held against the appellant, the appellant might reasonably have thought that the check at the road block was connected with the emergency rather than with the conveyance of uncustomed goods. That may or may not be so, but I do not consider that that is very material in this case. The defence was that the articles in question were unredeemed articles and part of the stock of a pawnshop in Kuala Lumpur. The articles had been given by the pawnshop to one Chee Yoon Pin, the appellant's uncle, who was to take them out of Kuala Lumpur to sell them at a profit. Chee Yoon Pin gave a receipt for these articles to the pawnshop. As Chee Yoon Pin decided not to go outstation he gave the articles to the appellant to sell them at Ipoh.

The learned President came to the conclusion that the receipt given by Chee Yoon Pin was fabricated for the purposes of this case and that the items referred to in the Unredeemed Articles Book were so vague and general in description that they were incapable of accurately identifying or being identified with, the jewellery found in possession of the appellant. I do not feel justified in interfering with these findings of fact.

It should have been quite easy for the defence to prove that the articles in question were part of the stock of unredeemed articles in the pawnshop but no definite evidence was adduced to show this. A book called 'Unredeemed Articles Book' was produced and this contained entries of certain articles or groups of articles each of which had a number with a reference to a previous number in another book; this other book contained entries indicating the original pledgor, date of pledge and description of article pledged. This book was not produced, and I therefore agree with the learned President that there was no satisfactory proof that the articles in question were part of the stock of the pawnshop, and that the appellant did not rebut the presumption under the Customs Ordinance, 1952.

The appeal is dismissed.

Appeal dismissed.

HEAP LEONG & CO. v. YONG KING LOKE; TAI CHIN SEONG — Objector

[O. C. J. (Wilson J.) April 22, 1955]

[K. L. — Civil Suit No. 31 of 1955]

Fraud — Transfer of property with intent to defraud — Onus to prove — Appeal against release of attachment.

The plaintiffs in this case on February 11, 1955, obtained judgment against the defendant in the sum of $6,288.77 and costs and pursuant to this judgment an order for attachment of the defendant's goods was made on February 20, 1955. On February 19, 1955, the objector was alleged to have purchased from the defendant one

radiogram and one refrigerator for a total sum of $650 and obtained receipts for them. The said items were left in the possession of the defendant in his house. At the objection hearing the objector produced receipts, a witness to the alleged payment and also a newspaper cutting of February 16, 1955, advertising the sale of a radiogram. The learned Registrar held that the attachment should be set aside in view of the fact that the plaintiffs alleged fraud on the part of the defendant and accordingly the onus lay on them to prove such fraud. As they had not conclusively done so, the learned Registrar held that the objector was a *bona fide* purchaser. The plaintiffs appealed against this decision.

Held: (1) a conclusive proof was not necessary, and what should be considered was whether the badges of fraud indicate an intent to defraud creditors; (2) in this case there were a number of such badges and the appeal must be allowed.

CIVIL SUIT.

S. Peddie for the plaintiff/appellant.

C. O. G. Gould for the objector.

Cur. Adv. Vult.

Wilson J. : — The learned Senior Assistant Registrar allowed this objection on the grounds that the plaintiff had failed to prove conclusively that the objector's claim was fraudulent. It seems quite clear that conclusive proof is not necessary, and that what should be considered is whether the badges of fraud indicate an intent to defraud creditors. There were a number of such badges in this case and the appeal must be allowed and the objector must pay the costs of the appeal and of the hearing before the Senior Assistant Registrar.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

MEENACHI SUNDRAM & ANOR. v. KUNJAN PILLAI

[A. C. J. (Thomson J.) May 3, 1955]

[Ipoh — Civil Appeal No. 5 of 1955]

Landlord and Tenant — Contractual tenancy — Sale of land by landlord — Whether tenancy affected — Bankruptcy of tenant — Disclaimer by Official Assignee — Control of Rent Ordinance, 1948.

This was an appeal from the decision of the President of the Sessions Court at Sungei Siput. The respondent was the monthly tenant of certain premises at No. 143 Main Road, Sungei Siput. At the time of the original letting the proprietors of the premises were the 1st appellant and one Alagappa Chettiar. Alagappa Chettiar died in 1949 and in 1952 the administrator of his estate sold his share to the 2nd appellant. On November 30, 1953, respondent was adjudicated bankrupt. The Official Assignee disclaimed the tenancy. Subsequently the appellants sent a notice to the respondent to vacate the premises. The respondent did not comply with the notice and the appellants thereupon took proceedings to recover possession.

The learned President held that on the change of ownership in 1953 the tenancy of the respondent terminated and as no fresh contract of tenancy was entered into, accordingly he became a statutory tenant within the meaning of s. 15 of the Control of Rent Ordinance, and his adjudication as a bankrupt did not affect his status as a statutory tenant, and therefore he was entitled to the protection of the Control of Rent Ordinance.

Held: (1) at the date of the respondent's adjudication as a bankrupt his original contractual tenancy was still in existence and he was therefore not a statutory tenant within the meaning of the Control of Rent Ordinance; (2) on his bankruptcy his tenancy passed to the Official Assignee and when the Official Assignee disclaimed the tenancy, the right to possession passed to the appellants-landlords.

Cases referred to:—

(1) *Thynne v. Salmon* (1948) 1 K.B. 482.

(2) *Reeves v. Davies* (1921) 2 K.B. 486, 491.

(3) *Ramasamy Pillai v. Meyappa Chettiar* (1955) M.L.J. 105.

CIVIL APPEAL.

S. K. Das for the appellants.

J. R. Devadas for the respondent.

Cur. Adv. Vult.

Thomson J. : — This is an appeal from a decision of the President of the Sessions Court at Sungei Siput relating to certain premises at No. 143 Main Road, Sungei Siput, which are and at all material times have been occupied by the respondent and of which the appellants are the registered proprietors.

The facts of the case have at no time been seriously in dispute.

At one time the proprietors of the premises were the 1st appellant and one Alagappa Chettiar and at some time in 1952 the Administrator of Alagappa Chettiar who had died on 25th January, 1949, sold his share to the 2nd appellant, the transfer being registered on 7th January, 1953. At some time prior to the sale the respondent had become a monthly tenant of the premises at a rent of $80 per month. After the sale the respondent continued in occupation of the premises. According to the evidence no fresh agreement was come to relating to the tenancy. The respondent simply remained in possession of the premises and went on paying rent at the same rate as previously, that is to say at $80 per month. There was, however, one significant difference. Whereas before the sale the rent was paid to the 1st appellant, one of the original proprietors, after the sale it was paid to one Teh Eh Bor, the husband of the 2nd appellant who was the purchaser of Alagappa Chettiar's interest in the property. The evidence is silent on the point but this change in the person to whom rent was paid suggests the inference that at the very lowest the respondent had some sort of constructive notice of a change in the ownership of the premises for it is a circumstance